

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 5, 6, and 12-27 are pending in the application, with claim 1 being the independent claim. Claims 2-4 and 7 were previously canceled. Claims 8-11 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. New claims 12-27 are sought to be added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

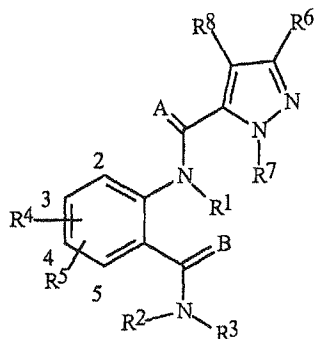
Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

The rejection of claims 1 and 8-11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lahm *et al.*, WO 03/015518 ("Lahm"), in view of Kodama *et al.*, U.S. Patent No. 6,472,417 ("Kodama") is respectfully traversed. Claims 8-11 have been canceled. Thus, this basis for rejection is moot.

A. *Prima facie Case of Obviousness Has Not Been Established*

Lahm discloses a very broad genus of compounds of formula I



wherein R¹-R⁸ may be a large number of substituents. Thus, Lahm discloses hundreds of thousands of compounds. Lahm also generally discloses that compounds of Formula I can be mixed with one or more other biologically active compounds or agents, such as insecticides, fungicides, nematocides, bactericides, acaricides, growth regulators, etc. Lahm mentions hundreds of such insecticides, fungicides, nematocides, bactericides and acaricides. Thus, Lahm discloses an infinite number of possible combinations of anthranilamide compounds of Formula I and one or more other biologically active compounds or agents.

Kodama is directed to a termite control composition for soil treatment containing a 3-cyano-1-(substituted phenyl)-pyrazole derivative and a pyrethroid compound. The compounds disclosed in Kodama are of a completely different structure than the anthranilamides of the present claims.

However, according to the Examiner:

Lahm teaches a pesticide composition comprised of the claimed compounds of formula (I-1), and particularly discloses the claimed compound, 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide (p. 3, lines 24-27; p. 42, Example 11; p. 89, lines 2-4). Lahm *et. al.* also

Atty. Dkt. No. 2400.0390000/RWE/PDL

teaches the combination of 3-bromo-N-[4-chloro-2-methyl-6-{{(methylamino)carbonyl]phenyl}-1-(3-chloro-2-pyridiny1)-1H-pyrazole-5-carboxamide with additional active agents, such as the pyrethroids cyfluthrin (as well as beta- and lambda cyfluthrin), cypermethrin, and deltamethrin (p. 142, claim 9).

(Office Action, pages 7-8). Applicants respectfully disagree and reiterate that for the reasons detailed in Applicants' replies of October 27, 2009, and May 5, 2010, the Examiner has not established a *prima facie* case of obviousness. The Examiner is using impermissible hindsight and has reconstructed the claimed invention based solely on the Applicant's disclosures.

The present claims are directed to a synergistically effective amount of an anthranilamide of formula (I-1-4) or formula (I-1-9) and at least one pyrethroid selected from the group consisting of beta-cyfluthrin, deltamethrin, and lambda-cyhalothrin wherein the compound of formula (I-1-4) or (I-1-9) and the at least one pyrethroid are present in a ratio of from 50:1 to 1:5. Claims 12-27 recite specific compounds and specific, narrower ratios of the compounds of the composition of claim 1.

Lahm does not provide a person of ordinary skill in the art any reason to select the specifically recited compounds (I-1-4) and (I-1-9) from among the thousands of generally disclosed compounds in Lahm and combine them with the pyrethroid compounds recited in the claims. In fact, the Examiner admits that "Lahm et. al. does not explicitly teach that 3-bromo-N-[4-chloro-2-methyl-6-{{(methylamino)carbonyl]phenyl}-1-(3-chloro-2-pyridiny1)-1H-pyrazole-5-carboxamide is combined with pyrethroids such as beta-cyfluthrin, cypermethrin, and deltamethrin in a ratio from 50:1 to 1:5." (Office Action, p. 8).

Kodama does not cure the deficiencies of Lahm. Kodama discloses N-phenyl pyrazoles having a structure that is significantly different from the anthranilamides of the present invention. Applicants respectfully disagree with the Examiner's statement that "[a]s the N-phenyl pyrazole compounds taught by Kodama *et. al.*, and the claimed compound, 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, both possess pesticidal activity, one of ordinary skill in the art would have expected success in substituting 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide for the N-phenyl pyrazole compounds in the composition taught by Kodama *et. al.*" (Office Action, p. 9).

Applicants reiterate that the N-aryl pyrazoles of Kodama have a completely different structure than the carboxamides of Lahm. Neither Lahm nor Kodama provide any reason for a person of ordinary skill in the art to substitute the N-aryl pyrazoles of Kodama with the anthranilamides of the present invention.

Applicants are aware of the flexible approach for establishing obviousness set out in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). However, as cautioned by Judge Rader in a post-*KSR* decision in *In re Kubin*, 561 F.3d 1351 (Fed. Cir. 2009), "where a defendant merely throws metaphorical darts at a board filled with combinatorial prior art possibilities, courts should not succumb to hindsight claims of obviousness." (561 F.3d at 1359.) In rendering the rejection, the Examiner selected compound I-1-4 disclosed in Lahm, and found the claimed pyrethroids by picking and choosing from a vast number of optional mixing partners disclosed in Lahm, based on impermissible hindsight. Furthermore, even if one would have picked and chosen presently claimed combination,

one would not have any expectation other than merely additive effect of the combination.

As such, Applicants contend that the Examiner's rejection is based on impermissible hindsight.

B. Synergistic Effect

Even assuming, *arguendo*, that a *prima facie* case of obviousness has been established, which it has not, the synergistic effect exhibited by the claimed invention is sufficient to rebut a *prima facie* case of obviousness.

Applicants reiterate that for the explanations detailed in Applicant's Replies of October 27, 2009, and May 5, 2010, the present invention possesses a synergistic effect as shown in the specification and the Declaration of Dr. Wolfram Andersch ("the Declaration").

With respect to the data the Examiner stated:

It is acknowledged that the specification and the declaration support synergy for the combinations of several compounds of formula (1-1) and betacyfluthrin, deltamethrin, and lambda[cyhalothrin], in the ratio range from 50:1 to 1:5 . . . The declaration and specification have only shown synergy between compounds (1-1-4), (1-1-9), and [lambdacyhalothrin], betacyfluthrin, and deltamethrin, for weight ratios of 25:1, 1:1, and 1:5.

(Office Action, pages 4-5). The unexpected results provided in the specification and the declaration rebut any *prima facie* case of obviousness of claim 1 over Lahm in view of Kodama.

Without acquiescence to the rejection, but in accommodation thereof, Applicants have amended claim 1 to recited compounds (I-1-4) and (I-1-9), betacyfluthrin, deltamethrin, and lambda-cyhalothrin. Withdrawal of the rejection is therefore respectfully requested.


Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Robert W. Esmond
Attorney for Applicants
Registration No. 32,893

Date: November 29, 2010

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

RWE/PDL/rns
1145880_3.doc